

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION  
4 IN RE: § CASE NO. 22-90273-11  
§ HOUSTON, TEXAS  
5 COMPUTE NORTH HOLDINGS, INC., §  
AND CN MINING, LLC, § FRIDAY,  
6 § OCTOBER 21, 2022  
DEBTORS. § 1:27 P.M. TO 2:03 P.M.  
7

8 **BID PROCEDURES ORDER**

9 BEFORE THE HONORABLE MARVIN ISGUR  
10 UNITED STATES BANKRUPTCY JUDGE  
11

12 APPEARANCES: (SEE NEXT PAGE)  
13

14 CASE MANAGER: TYLER LAWS  
15  
16

17 (Recorded via CourtSpeak; no logs notes available)  
18  
19

20 **TRANSCRIPTION SERVICE BY:**

21 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
22 935 Eldridge Road, #144  
23 Sugar Land, TX 77478  
24 281-277-5325  
www.judicialtranscribers.com

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

## APPEARANCES:

FOR THE DEBTORS:

PAUL HASTINGS, LLP  
James T. Grogan, III, Esq.  
600 Travis Street  
58th Floor  
Houston, Texas 77002  
713-860-7300

FOR SUNBELT  
SOLOMON SERVICES:

MAYER BROWN, LLP  
Brandon Renken, Esq.  
700 Louisiana Street  
Suite 3400  
Houston, Texas 77002  
713-238-2602

FOR OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS:

MCDERMOTT WILL & EMERY, LLP  
Charles R. Gibbs, Esq.  
2501 N Harwood Street  
Suite 1900  
Dallas, Texas 75201  
214-295-8063

FOR THE US TRUSTEE:

US TRUSTEE'S OFFICE  
Jayson B. Ruff, Esq.  
515 Rusk Street  
Suite 3516  
Houston, Texas 77002  
713-718-4650

(ALSO APPEARING VIA ZOOM) :

## FOR TZ CAPITAL HOLDINGS:

HAYNES & BOONE, LLP  
Stephen M. Pezanosky, Esq.  
201 Main Street  
Suite 2200  
Fort Worth, Texas 76102  
817-347-6600

FOR THE DEBTORS:

PAUL HASTINGS, LLP  
Matthew Micheli, Esq.  
71 South Wacker Drive  
Suite 4500  
Chicago, Illinois 60606  
312-499-6018

1 APPEARANCES (VIA ZOOM CONTINUED) :

2  
3 FOR MARATHON  
4 DIGITAL HOLDINGS:

WEIL GOTCHAL & MANGES, LLP  
Jessica Liou, Esq.  
767 Fifth Avenue  
New York, New York 10153  
212-310-8817

5  
6  
7 FOR GENERATE LENDING:

KIRKLAND & ELLIS, LLP  
Christopher Marcus, Esq.  
601 Lexington Avenue  
New York, New York 10022  
212-446-4878

8  
9  
10  
11  
12  
13  
14 (Please also see Electronic Appearances.)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   HOUSTON, TEXAS; FRIDAY, OCTOBER 21, 2022; 1:27 P.M.

2                   THE COURT: All right. We are here in the Compute  
3 North Holdings case. It's 22-90273.

4                   Appearances have been made electronically. If you  
5 intend to speak at today's hearing, please come forward and  
6 identify yourself, if you're in the courtroom, or press five  
7 star if you're on the phone.

8                   Mr. Grogan, good afternoon.

9                   MR. GROGAN: Good afternoon, Your Honor.

10                  James Grogan from Paul Hastings, on behalf of  
11 Compute North Holdings and its debtor affiliates. With me  
12 today is Mr. Matt Micheli. Mr. Micheli is going to be  
13 handling the discussion around the bid procedures Order.  
14 Thank you.

15                  THE COURT: Thank you, Mr. Grogan.

16                  Mr. Gibbs, good afternoon.

17                  MR. GIBBS: Good afternoon, Your Honor. For the  
18 Record, Chuck Gibbs at McDermott Will and Emery, proposed  
19 counsel for the Official Committee.

20                  THE COURT: Thank you.

21                  MR. RUFF: Good afternoon, Your Honor.

22                  Jayson Ruff for the US Trustee.

23                  THE COURT: Good afternoon, Mr. Ruff.

24                  Mr. Pezanosky, good afternoon.

25                  MR. RENKEN: Good morning, Your Honor.

1 THE COURT: I'm sorry, I didn't --

2 MR. RENKEN: No, no, no, my apologies.

3 THE COURT: I'm sorry, I wasn't --

4 MR. RENKEN: Just out of abundance of caution,

5 Brandon Renken for Sunbelt Solomon, one of the creditors.

6 THE COURT: Thank you, Mr. Renken.

7 MR. RENKEN: Thank you, Your Honor.

8 THE COURT: I'm sorry that I wasn't looking up.

9 MR. RENKEN: My fault.

10 THE COURT: Mr. Pezanosky?

11 MR. PEZANOSKY: Your Honor, Stephen Pezanosky and  
12 Ben Krausman (phonetic), Haynes and Boone, on behalf of  
13 TZ Holdings Company, which is an affiliate of Mercuria  
14 Energy Resources.

15 THE COURT: Thank you.

16 Mr. Micheli?

17 MR. MICHELI: Good afternoon, Your Honor.

18 Matt Micheli of Paul Hastings proposed counsel to  
19 Compute North Holdings, Inc. and its affiliate debtors.

20 THE COURT: Thank you. Ms. Liou, good afternoon.

21 MS. LIOU: (No verbal response).

22 MR. MICHELI: If there's no one else, Your Honor,  
23 I guess we can get started.

24 THE COURT: No. Ms. Liou was making an  
25 appearance.

1 Go ahead, Ms. Liou.

2 MS. LIOU: Yes. I'm sorry. Thank you,  
3 Your Honor. Jessica Liou from Weil Gotshal and Manges, here  
4 on behalf of Marathon Digital Holdings, Inc. Your Honor may  
5 have noticed that we filed a notice of appearance and a  
6 motion to substitute counsel. We'll be taking over this  
7 matter from Mr. Gregory Ellis and his firm.

8 Thank you, Ms. Liou.

9 I've got one more person that wants to appear.

10 Mr. Marcus, good afternoon.

11 MR. MARCUS: Thank you, Your Honor.

12 Christopher Marcus from Kirkland and Ellis, on  
13 behalf of Generate.

14 THE COURT: Thank you. All right. Mr. Micheli?

15 MR. MICHELI: Thank you, Your Honor. Your Honor,  
16 we're here, as Mr. Grogan noted, on our final order  
17 approving certain sale and bidding procedures. Earlier  
18 today we filed an amended agenda, which appears at Docket  
19 No. 223. The bid procedures Motion is the only item up  
20 today.

21 The amended agenda also reflects some additional  
22 material that we filed. Most notably earlier today we filed  
23 a clean and redline version of the proposed form of Order  
24 and that appears at Docket No. 222 and includes a clean and  
25 two versions of redlines. I know we filed it only a few

1 hours before the hearing so I'm not certain if the Court's  
2 had a chance to review those changes, but we did include a  
3 redline against the Order that was originally filed with the  
4 Motion and we also filed a redline against the initial sales  
5 procedure Order that was entered a couple of weeks ago.

6                 The proposed form of Order tracks the original  
7 filed version so it incorporates those items and those  
8 procedures that were approved as part of the initial sale  
9 procedures Order and we did that, Your Honor, to avoid  
10 confusion of the parties looking to multiple orders to  
11 figure out what the procedures were that were governing the  
12 sale process.

13                 By the way, let me -- over the last couple of days  
14 and frankly during the last 24 hours, we I believe have  
15 reached a resolution to all remaining issues and objections  
16 that were filed in the cases. You heard from some of the  
17 counsel that are present today.

18                 I'm sure they'll correct me if I'm wrong, but I  
19 am -- I do believe that that revised form of Order reflects  
20 the consensual form of Order that we're prepared to go  
21 forward with today, Your Honor.

22                 THE COURT: So one of these issues I tried -- and  
23 I did look through it, but I don't think I found what I was  
24 looking for in one particular issue. There are a couple of  
25 objections that say both "We want to be a qualified bidder

1 or we want to be a credit bidder and we want to receive  
2 inside information." We talked about this, I think, some at  
3 the last hearing.

4                   How does the Order reconcile that no bidder,  
5 whether they're a credit bidder or a qualified bidder, can  
6 both receive information and then be a bidder? They can be  
7 bidder, drop out of being a bidder and then get insider  
8 information, but they can never get insider information and  
9 subsequently bid. So how is that reconciled in the proposed  
10 Order?

11                  MR. MICHELI: So in the bid procedures themselves,  
12 Your Honor -- and I'm looking at Docket Entry 222-2,  
13 which -- this is the --

14                  THE COURT: Okay.

15                  MR. MICHELI: -- redline version against the  
16 original filed Order. On page 16 of those bid procedures or  
17 I guess page 100 of 150 of the cumulative filed document --

18                  THE COURT: Hold on. My 222-2 only has 49 pages.

19                  MR. MICHELI: I'm on page 48 of 49.

20                  THE COURT: Great.

21                  MR. MICHELI: Sorry.

22                  THE COURT: No. Okay. I'm on 48 of 49.

23                  MR. MICHELI: So we added the paragraph,  
24 Your Honor, at the bottom to address this issue.

25                  THE COURT: I don't --

1 MR. MICHELI: So they're not entitled to be --

2 THE COURT: I don't know what that means.

3 MR. MICHELI: Okay.

4 THE COURT: I guess I better look at the complex  
5 case procedures to see just what we said there on this issue  
6 because I don't have it memorized.

7 MR. MICHELI: I did look at them. I will pull  
8 them up as well, Your Honor, to make sure we're clear, but  
9 the intent, Your Honor, is that parties that are  
10 consultation parties and receive information about other  
11 bidders are prohibited from becoming a bidder.

12 And as you'll see in the redline, we added  
13 TZ Capital Holdings, LLC and they're aware of that -- they  
14 were aware of that restriction. We had this discussion with  
15 them and they understand that by becoming a consultation  
16 party, they are giving up their right to be a bidder.

17 THE COURT: I thought that you said in your  
18 proposed Order that they reserved all of their rights to  
19 object to everything and that that was going to be okay with  
20 you.

21 MR. MICHELI: We did say, Your Honor, we provided  
22 them -- that they reserved the right to object to the sale  
23 process as it has been conducted by the Debtors and that  
24 appears at paragraph 45.

25 THE COURT: Does that include the right to object

1 to this, i.e., can they come in, get inside information and  
2 then bid?

3 MR. MICHELI: I don't believe it does, Your Honor,  
4 and I guess counsel to TZCH can weigh in on this, but that  
5 was not our intent.

6 MR. PEZANOSKY: Your Honor, I hope I'm unmuted.

7 THE COURT: You are, you're unmuted.

8 MR. PEZANOSKY: Your Honor, Steve Pezanosky, on  
9 behalf of TZ Capital Holdings. We do understand that if we  
10 elect to be a consultation party, that we are going to be  
11 prohibited from bidding and we decided not to be a bidder so  
12 we're fine with that.

13 THE COURT: All right. I want to go back and read  
14 the complex rules on this question.

15 MR. MICHELI: Yeah. It appears in paragraph 37 of  
16 the complex rules, Your Honor.

17 (Pause in the proceedings.)

18 THE COURT: Yeah, that's not adequate because that  
19 only applies to secured lenders and to committee members. I  
20 want anyone who gets inside information, whether they are a  
21 secured lender or a committee member, no one can both -- I  
22 don't know why we can't say it in plain English is that once  
23 someone receives inside information, they may not in the  
24 future become a bidder.

25 Can we just say that?

1 MR. MICHELI: Yes, we can, Your Honor.

2 THE COURT: Okay. So let me hear from others  
3 about the relief that is sought. We'll start with the  
4 Committee.

5 Mr. Gibbs?

6 MR. GIBBS: Good afternoon again, Your Honor.

7 Chuck Gibbs with McDermott Will and Emery, on  
8 behalf of proposed counsel for the Committee. On the last  
9 point you just raised and that was addressed by Debtors'  
10 counsel I wanted the Court to be aware that we have a five-  
11 member committee. Two of those committee members have  
12 indicated an interest in bidding on assets and have been --  
13 I think they've now signed NDAs and are evaluating  
14 information in the data room.

15 Once we learned that that happened and luckily  
16 prior to those actions, those committee members had not  
17 received any inside information regarding the sale efforts  
18 or information they've gleaned from the Debtors and their  
19 advisors. And in the meeting subsequent to that  
20 acknowledgement, they've been excused for any conversations  
21 and deliberations about what's going on.

22 THE COURT: Thank you for doing that. I think  
23 that's got to be the appropriate way for you to handle it  
24 and I appreciate that.

25 MR. GIBBS: Yeah.

1                   THE COURT: What do you think the concept of this  
2 is me sort of forcing this issue on everyone? Do you have  
3 any problem with forcing it and saying you can't -- I don't  
4 know that you're ever going to be in a fair bidding process  
5 if some of the bidders have inside information, some don't  
6 and that's why I'm just being sure that we attract as many  
7 bidders as possible, but what is the Committee's view about  
8 that?

9                   MR. GIBBS: We are completely aligned with the  
10 concerns Your Honor raised and the position you suggested  
11 needs to be clearly stated. We want everybody that wants to  
12 get in will be considered -- a good consideration making a  
13 bid to get in and get all the information they can as  
14 quickly as possible to try to formulate a bid that would be  
15 qualified.

16                  And to the extent that anybody is asking for  
17 consultation rights or any other kind of information rights  
18 about the process, they simply can't get in. I've seen too  
19 many instances where the playing field gets unleveled  
20 because of that.

21                  THE COURT: What about the rest of the proposed  
22 form of Order that was filed in redline form?

23                  MR. GIBBS: We're fine with it, Your Honor. We  
24 reviewed the final changes -- well, the first round of  
25 changes since the last hearing as well as the changes that

1 were incorporated and filed earlier today.

2           There was a separate discussion between committee  
3 counsel and the Debtor regarding an extension of the  
4 deadline for parties that receive notices of assumption to  
5 file their response. It was originally requiring a response  
6 by August -- excuse me -- October 25 and that's now been  
7 extended to November 1.

8           The Debtors' Motion regarding assumption notice  
9 was 135 pages long. Probably each page had 10 parties with  
10 contracts. The members of the Committee that received those  
11 notices were telling us they were having a hard time  
12 reconciling contract numbers versus parties and what exact  
13 contracts the Debtor was proposing and they simply needed  
14 more time. And we assume, I think correctly, that those  
15 same problems were being run into by other creditors that  
16 received those notices so we reached out to the Debtor and  
17 they accommodated and extended that deadline. The rest of  
18 the Order we are fine with.

19           And that sort of leads to maybe my overall  
20 comments to the Court on where we find ourselves. We worked  
21 really diligently since we were retained as has Miller  
22 Buckfire, proposed advisors to the Committee. We're trying  
23 to get up to speed and get knowledgeable both about the  
24 status of the sale process, the extent of the interest, the  
25 extent of the negotiations as well as the efforts to try to

1 find DIP financing.

2           We've also spent a lot of time scrubbing and  
3 pressure testing the 13-week budget that the Debtors'  
4 advisors have put together to see if we could figure out a  
5 way to cut costs and therefore extend the potential runway  
6 to get bids.

7           Unfortunately given the sort of inherent pressure  
8 between trying to cut costs and trying to preserve a going  
9 concern value, there's just not a lot on the very short-term  
10 basis that the Debtor, we think, can cut that would  
11 effectively give them the ability to extend the runway.

12           And that coupled with the insights that we have  
13 gained about the status of the process we reluctantly don't  
14 feel it'd be fiscally prudent to ask the Court to order them  
15 to give us a longer runway. I don't think -- we should  
16 never risk administrative insolvency by extending the  
17 process beyond what their budget looks like. They can  
18 afford keeping the Debtor going as a going concern so we're  
19 supportive of that.

20           THE COURT: I appreciate very much that adult  
21 approach taken by the Committee.

22           MR. GIBBS: So we're not opposing and -- but we  
23 do, for the Record, want and frankly expect that the Debtor  
24 will continue its efforts to cut costs everywhere they can  
25 and to continue to look under any rock to find some

1 immediate sources of liquidity, which may give them the  
2 opportunity to extend the current deadline for bids which is  
3 next week. So generally speaking more time is always  
4 better. This is a very short timeline. We would have loved  
5 to have 60 days not 35, but we're comfortable with where the  
6 process is and we think it's being conducted thoroughly and  
7 successfully so we'll see what the bids looks like on the  
8 27th.

9 THE COURT: Okay. Before you leave, I want to  
10 talk about two paragraphs. I've got Mr. Pezanosky, who I  
11 hope I can have him join in with the Committee and the  
12 Debtor on this as well, and this is without limiting any  
13 other party's right to object to anything. I just want to  
14 get a couple of things squared away here --

15 MR. GIBBS: All right.

16 THE COURT: -- before we go much further. I want  
17 to go down to paragraph 45.

18 Assuming that I understood you correctly,  
19 Mr. Pezanosky, and -- here it is, paragraph 48. I am not  
20 trying to change what I heard you say, Mr. Pezanosky. I  
21 think I just want to rewrite this a little bit and if I am  
22 doing injury to your deal, I hope that you will speak up and  
23 let me know.

24 But I think what you're telling me is is that  
25 paragraph 48 doesn't deal with reserving rights with respect

1 to the Order, but reserves rights with respect to whether  
2 people carry out the Order, i.e., does the sale process  
3 occur in the manner in which we are ordering it? But that  
4 you're not trying to reserve rights if the sale process is  
5 carried out in the way that we order it as to whether that  
6 is appropriate. And I want to be sure I heard you right.

7 MR. PEZANOSKY: Your Honor, a little bit different  
8 than that, but our concern is that the Debtor that are a  
9 joint venture partner with, which is CN member, has certain  
10 obligations under our LLC Agreement including  
11 confidentiality obligations under that LLC Agreement. And  
12 there was a provision in this Order which effectively would  
13 isolate them from any violations of those confidentiality  
14 obligations within that LLC Agreement.

15 This paragraph, this sentence, was effectively  
16 negotiated to be put in there to -- obviously the Debtors  
17 don't believe that they've done anything wrong and our --  
18 and it may be that they haven't or it may be that even if  
19 they have, it doesn't matter, but this sentence I think in  
20 this paragraph was designed to reserve all of our rights  
21 with respect to that so that the sentence in the paragraph  
22 (indiscernible) effectively exculpated from providing the  
23 information to potential bidders does not trump this  
24 section.

25 That being said -- again I will reiterate -- we do

1 understand the prohibition between getting -- being a  
2 consultation party and being a bidder and we chose not to be  
3 a bidder and we understand that. We would choose to be a  
4 consultation party as a secured creditor with respect to  
5 that membership interest.

6 THE COURT: Yeah, so maybe then there is an issue.  
7 Let's assume that they follow this Order and we get down to  
8 a sale hearing and there is a high bidder.

9 Are you reserving the right to come back and  
10 challenge -- and everybody agrees it's the high bidder, you  
11 even agree it's the high bidder, so everyone agrees they're  
12 the high bidder. Are you reserving the right to challenge  
13 whether the sale can then occur to the high bidder or are  
14 you reserving the right for other things?

15 MR. PEZANOSKY: I'm reserving the right -- well,  
16 two things, Your Honor. Number one, I'm reserving the  
17 right to assert claims against the Debtor to the extent we  
18 are injured by virtue of their filing their confidentiality  
19 agreements post-petition and the LLC Agreement. That's the  
20 first reservation of rights.

21 Second -- and this is not up for today, but we  
22 would intend to file an objection to the sale to tee this  
23 issue up, but we have a right under the LLC Agreement to  
24 consent to who are joint venture partner is going to be so  
25 we have a consent right with respect to the sale.

1           We're not asking the Court to rule on whether or  
2 not that consent right is enforceable today or not. We  
3 believe it is. We'll take that up in connection with the  
4 sale. And we are reserving the right to take that issue up  
5 later as well.

6           THE COURT: So I'll hear from others. I actually  
7 can live with those two reservations so long as there aren't  
8 more than I don't know about, and I would want paragraph 48  
9 to reserve those two. Let me hear from others about whether  
10 it's okay with -- and it may be okay with everybody to just  
11 say you can come in later and object to the whole process,  
12 but this is a very broad reservation.

13           If we're in the urgent situation that Mr. Gibbs is  
14 describing, I don't want to get to the end and then have  
15 other objections that -- I've got no problem you're trying  
16 to reserve, but I may have a problem letting you reserve,  
17 but I may want to get them cleared up now. But again those  
18 two I'm okay leaving if others are.

19           MR. GIBBS: I frankly like your suggestion better  
20 than what the Order currently says, but we understood what  
21 paragraphs 48 and 49 to do was to give Mr. Pezanosky's  
22 client the reservation of their rights to complain, as he's  
23 described, and nothing more.

24           And to the extent that they have a specific  
25 complaint about a bidder that's been designated as the

1 highest bidder based upon some elimination of what they  
2 assert to be consent rights, that they have the right to  
3 come complain to the Court at the sale hearing about that  
4 and the sale process is not affecting their rights to urge  
5 that position. We were okay with that.

6 THE COURT: Let me ask Mr. Micheli and let me ask  
7 Mr. Pezanosky.

8 MR. MICHELI: Yes, Your Honor. So as  
9 Mr. Pezanosky described, that's what we understood to be  
10 their reservation of rights.

11 And I think just for clarification, there are two  
12 reservation of rights in here. The first one with respect  
13 to Mr. Pezanosky's client appears at the end of paragraph 9  
14 and this is the paragraph that they took specific issue with  
15 regarding confidentiality information. And so it starts  
16 with "Provided further" at the end of that paragraph 9  
17 unless -- and I apologize. I think the -- going to the  
18 clean version, Your Honor, I think that a redline has  
19 some -- paragraph number issues.

20 THE COURT: I thought this was the clean version  
21 that I was in.

22 MR. MICHELI: You are. I was looking at a redline  
23 and I gave you the wrong -- it's paragraph 12. My  
24 apologies.

25 THE COURT: Not a problem.

1                   MR. MICHELI: The end of paragraph 12 starting  
2 with the provided language was added to address the  
3 confidentiality concerns that Mr. Pezanosky raised.

4                   THE COURT: Right.

5                   MR. MICHELI: And the paragraph 48, if I'm not  
6 mistaken, was -- that language was actually included in the  
7 interim form of Order. And to make matters more confusing,  
8 in the interim form of Order, we deleted paragraph -- what  
9 was then paragraph 12 because it wasn't applicable to the  
10 relief that was being granted.

11                  So we -- but we have spoken with Mr. Pezanosky and  
12 we agree that this Order is not intended to do anything to  
13 impact his rights as they may be with respect to consent or  
14 other issues under the terms of the Limited Liability  
15 Company Agreement, Your Honor.

16                  THE COURT: So I've got consent, I've  
17 confidentiality. It sounds like you don't have any problem  
18 with that. Mr. Gibbs doesn't.

19                  Mr. Pezanosky, do you have any problem defining 48  
20 to that so that we know what we're dealing with?

21                  MR. PEZANOSKY: Not at all. That's completely  
22 fine with us, Your Honor.

23                  THE COURT: That's great. Thank you.

24                  Then let's, Mr. Micheli, get you to revise 48 in a  
25 manner that Mr. Pezanosky can agree to the language on, get

1 Mr. Gibbs to sign off on it so that 48 is dealing with those  
2 two issues and they will, in fact, be preserved.

3 So let me hear from others, not only on those  
4 issues but on any other issues with respect to the proposed  
5 form of Order. I will start with Mr. Ruff.

6 Mr. Ruff, what's the US Trustee's position of  
7 moving pretty fast to get a sale done.

8 MR. RUFF: Your Honor, I think just given the  
9 economic realities of this case, I think what is laid out  
10 here is a fair and as robust of a process as I could hope  
11 for.

12 One of the concerns that we -- that was addressed  
13 that we raised with the Debtors here, which is the timeline  
14 for the *de minimis* sales, as you can see in this Order, it  
15 was extended just by a day. Because we're dealing with  
16 calendar days here and just the concern if we ran into a  
17 holiday weekend or something along those timelines that it  
18 would still give people reasonable notice. We're grateful  
19 for the Court's comments and the Debtors' agreement to  
20 incorporate those. But with those changes, Your Honor, I  
21 think this process is fair and probably the best process  
22 that we can have given the facts and circumstances of this  
23 case.

24 THE COURT: Thank you. Ms. Liou?

25 MS. LIOU: Your Honor, I think we are fine with

1 everything that's been discussed and the changes in the  
2 Order. We would only ask that we see copy of the revised  
3 Order before it ultimately is filed with the Court.

4 THE COURT: Thank you. Anyone else?

5 (No verbal response.)

6 THE COURT: All right.

7 MR. MARCUS: Your Honor, this is Mr. Marcus.

8 THE COURT: I'm sorry, go ahead, Mr. Marcus.

9 MR. MARCUS: Yeah. Can you hear me okay,  
10 Your Honor?

11 THE COURT: Yes, sir. Thank you.

12 MR. MARCUS: I just want to ask for a  
13 clarification and it relates to Your Honor's comments about  
14 the -- you can't be a consultation party and a bidder, which  
15 I totally understand. We are a bidder, Generate is a bidder  
16 and so we're okay not being a consultation party, but there  
17 were some comments made and I really just want to be  
18 transparent about this.

19 Given the structure of the ownership of each silos  
20 and we'll call them "Kearney" silo -- remember that's  
21 CN Pledgor -- we, as the Debtor, hold the equity of several  
22 entities below and there's 100 plus (indiscernible) entities  
23 below or there could be a situation where bidders need to  
24 have conversations with the lender down at those silos in  
25 order to have some -- in order to put a different type of

1 bid in and I wouldn't want to --

2 THE COURT: Right. Yeah, I'm familiar with the  
3 problem in other cases, Mr. Marcus. I would like to hear  
4 from everyone else, but in general it seems to me that if a  
5 bidder chooses to contact your client as a potential lender,  
6 that you're not then receiving any inside information from  
7 the Debtor, you're receiving it from a bidder and I don't  
8 think I have any problem with that, but I need to hear from  
9 others who --

10 MR. MARCUS: Just to be clear, Your Honor, we  
11 would not talk to another bidder without the consent of the  
12 Debtor and without full transparency to the Debtor and the  
13 Committee. We will not do that.

14 The question is more about with the consent and  
15 with that transparency, I just want to make sure -- look  
16 this is really an issue for the Debtors, right? If the  
17 Debtors decide that (indiscernible) would be maximized by  
18 allowing us to have those conversations -- I've certainly  
19 seen that before -- we're ready to do it. I don't want to  
20 do anything that would run afoul of the language in this  
21 Order, that's all.

22 THE COURT: Yeah. No, look I think, Mr. Marcus,  
23 what I'm trying to say is -- and I agree that it's got to be  
24 a process where the Debtors give authority to another bidder  
25 to contact you. I don't have a problem with that and I

1 don't have a problem with another bidder contacting you.  
2 The Debtors don't give you inside information. The Debtors  
3 consent to another bidder given you whatever information the  
4 other bidder wants to give you. If the other bidder chooses  
5 to share information with you to try and get you to provide  
6 debt to them for their bid or some other feature that you  
7 might be negotiating with them, I have no heartburn from  
8 that because that doesn't seem to me to impair other bidders  
9 in any different sense than they would be in an open  
10 marketplace outside of bankruptcy.

11           The problem with doing it in bankruptcy when we're  
12 requiring the provision of insider information, for example,  
13 if your client was not a bidder, they would get a whole lot  
14 more information as a consultation party and that wouldn't  
15 occur outside. So I don't have a problem with what you're  
16 describing.

17           But we ought to make it clear when you write that  
18 provision, Mr. Micheli, and replace the paragraph for that  
19 unless you have a problem with what Mr. Marcus is  
20 describing.

21           MR. MICHELI: Thank you, Your Honor. I don't. I  
22 think we can make it clear that it's information that is  
23 provided by the Debtors to those parties and we can clarify  
24 that language to make sure that there's no issue there.

25           And we also have language throughout the -- in the

1 bid procedures that allow the Debtors to put bidders  
2 together to either combine bids or to have discussions  
3 surrounding that, but the Debtors will facilitate that. So  
4 I think that given those provisions, we do not have an issue  
5 with it.

6 THE COURT: All right. So let's be sure that we  
7 have Mr. Marcus sign off on this revised language as well.

8 Mr. Gibbs, I see you nodding your head. I don't  
9 know that other people do. You sound like -- you look like  
10 you're okay with this, right?

11 MR. GIBBS: I was nodding my head being I'm okay  
12 with it.

13 THE COURT: Thank you. All right. What other  
14 issues should we address today?

15 (No verbal response.)

16 THE COURT: All right. I am authorizing ECF 222  
17 with the changes that have been discussed on the Record,  
18 will be signed by the Court once submitted, but I'm  
19 authorizing that the Debtors and others can perform under  
20 222 now as amended orally on the Record so that we don't  
21 have any delay in the implementation of it.

22 And hopefully, Mr. Micheli, you'll get that done  
23 later today or first thing Monday and I may not get it  
24 signed until Monday or something, but you can act on it  
25 immediately.

1                  Does that work?

2                  MR. MICHELI: Thank you, Your Honor. One point --  
3 that does work for the Debtors, Your Honor, and I think we  
4 can quickly resolve these issues. One point I did want to  
5 raise with the Court, we have a proposed sale hearing date  
6 in the form of Order for November 8th with -- we presumed  
7 the Court's availability there and I want to confirm before  
8 we enter the final form of Order that that is -- that that  
9 date is available and we can lock in the time for that. And  
10 that appears, I believe, in paragraph 42.

11                THE COURT: It may not work actually.

12                What time did you need your hearing?

13                MR. MICHELI: We didn't have a time, Your Honor.  
14 The day I think was more important than the time for the  
15 Debtors but.

16                THE COURT: Well, let me just see.

17                (Pause in the proceedings.)

18                THE COURT: How long would you expect to need for  
19 that hearing? I'm not going to hold you to this, but I  
20 just -- I've got an afternoon doctor's appointment and an  
21 afternoon fight and so I'm trying to figure out what to do  
22 about you.

23                MR. MICHELI: So I'm hopeful, Your Honor, that we  
24 can work to get to a consensual hearing on that. I think if  
25 we had an hour to an hour and a half, we should be able to

1 do that. It's a little hard to tell at this point.

2 MR. GROGAN: Your Honor, if it was helpful,  
3 November 7th, November 9th, we can be a little flexible on  
4 that. It doesn't have to be the 8th.

5 THE COURT: Okay.

6 (Pause/voices off record.)

7 MR. GROGAN: I think we already -- we actually  
8 already have something on the 7th, Your Honor.

9 THE COURT: You do, but it's very short.

10 MR. GROGAN: Yeah, at 9:00 a.m.

11 THE COURT: Let's go ahead and calendar it for the  
12 7th at 9:00 a.m. and I'll -- you may have an interruption or  
13 two, but I don't think it'll be bad.

14 MR. GROGAN: Okay.

15 THE COURT: Will that work? Does anyone have a  
16 conflict on the 7th at 9:00 a.m. for the hearing?

17 MR. GIBBS: That's fine with the Committee,  
18 Your Honor.

19 THE COURT: Other choice is 8:00 a.m.

20 MR. GIBBS: Pardon?

21 THE COURT: There's also an 8:00 a.m. choice if  
22 you'd prefer.

23 MR. GIBBS: That'd be fine.

24 MR. GROGAN: I think 9:00 a.m. is fine,  
25 Your Honor.

1           THE COURT: Okay.

2           MR. GROGAN: Okay.

3           THE COURT: November 7th, 9:00 a.m. There may be  
4 some interruptions as we move through the morning, but we'll  
5 get you finished that way.

6           MR. GROGAN: All right.

7           MR. GIBBS: Thank you, Judge.

8           THE COURT: Thank you. Anything else I can --

9           MR. MICHELI: Thank you, Your Honor.

10          THE COURT: Anything else I need to get done?

11          (No verbal response.)

12          THE COURT: All right.

13          MR. MICHELI: Your Honor, I believe that those  
14 were all the issues for the hearing today.

15          THE COURT: I appreciate all the hard work. I  
16 look forward to getting an order submitted, Mr. Micheli.  
17 Thank you.

18          (Counsel thank the Court.)

19          (Hearing adjourned at 2:03 p.m.)

20

21

22

23

24

25

\* \* \* \* \*

1           *I certify that the foregoing is a correct  
2 transcript to the best of my ability due to the condition of  
3 the electronic sound recording of the ZOOM/video/telephonic  
4 proceedings in the above-entitled matter.*

5 /S/ MARY D. HENRY

6 CERTIFIED BY THE AMERICAN ASSOCIATION OF  
7 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
8 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
9 JTT TRANSCRIPT #66464

10 DATE FILED: OCTOBER 25, 2022

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25